

STATE OF MICHIGAN
COURT OF APPEALS

SALLY PALAIAN,

Plaintiff-Appellant,

v

CITY OF AUBURN HILLS,

Defendant-Appellee.

UNPUBLISHED

June 16, 2011

No. 297560

Oakland Circuit Court

LC No. 2009-101522-NI

Before: FORT HOOD, P.J., and DONOFRIO and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this governmental immunity highway exception case, plaintiff Sally Palaian appeals as of right the trial court's order granting defendant City of Auburn Hills summary disposition pursuant to MCR 2.116(7). We affirm.

This case arises out of an accident that occurred when plaintiff crashed on her bicycle because of a cut-out in the pathway that defendant had made for asphalt repairs. On appeal, plaintiff argues that she substantially complied with the notice requirements of MCL 691.1404 because a police officer employed by defendant investigated the accident and completed an incident report. We disagree. We review whether a trial court properly granted a motion for summary disposition de novo. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). The proper interpretation of a statutory provision is a question of law that is also reviewed de novo. *Neal v Wilkes*, 470 Mich 661, 664; 685 NW2d 648 (2004).

“A trial court properly grants summary disposition under MCR 2.116(C)(7) where a claim is barred by immunity granted by law.” *LaMeau v City of Royal Oak*, 289 Mich App 153, 166; ___ NW2d ___ (2010). “A party may support or defend a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence.” *Id.* at 166-167, citing *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). We accept the contents of the complaint as true unless contradicted by documentary evidence, and we consider the documentary evidence in the light most favorable to the nonmoving party. *Zwiers v Growney*, 286 Mich App 38, 42; 778 NW2d 81 (2009) (citation omitted).

“When interpreting statutes, our obligation is to discern and give effect to the Legislature's intent as expressed in the statutory language.” *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003). Statutory construction begins with the language of

the statute. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999) (citation omitted). “If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted.” *Id.*

A governmental agency is generally immune from tort liability while engaged in the exercise of a governmental function pursuant to the Governmental Tort Liability Act (GTLA), MCL 691.1401, *et seq.* MCL 691.1407(1); *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 202; 731 NW2d 41 (2007). There is a highway exception to government immunity, which provides for the recovery of damages for injuries resulting from the government agency’s failure to keep the highway in reasonable repair. MCL 691.1402. In order to bring a claim under the highway exception, the injured person must provide notice of the injury and defect to the governmental agency pursuant to MCL 691.1404(1).

MCL 691.1404(1) provides, in the pertinent part:

As a condition to any recovery for injuries sustained by reason of any defective highway, the injured person, within 120 days from the time the injury occurred, except as otherwise provided in subsection (3) shall serve a notice on the governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.

“The notice may be served upon any individual, either personally, or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the governmental agency . . .” MCL 691.1404(2). “The notice need not be provided in a particular form[,]” and “[i]t is sufficient if it is timely and contains the requisite information.” *Plunkett v Dep’t of Transp*, 286 Mich App 168, 176; 779 NW2d 263 (2009). Because “MCL 691.1404 is straightforward, clear, [and] unambiguous”, we must enforce it as written. *Rowland*, 477 Mich at 219. However, “a liberal construction of the notice requirements is favored to avoid penalizing an inexpert layman for some technical defect.” *Plunkett*, 286 Mich App at 176.

“A purported notice that does not comply with [MCL 691.1404] is insufficient.” *Burise v City of Pontiac*, 282 Mich App 646, 655; 766 NW2d 311 (2009). Under MCL 691.1404(1), the injured person “shall serve a notice . . .” The use of the word “shall” indicates that this is a mandatory requirement established by the Legislature. *Burise*, 282 Mich App at 655. Pursuant to MCR 2.105(G)(2), service of process may be made on a city by serving a summons and copy of the complaint on the mayor, the city clerk, or the city attorney. In this case, it is undisputed that plaintiff did not serve notice on defendant’s mayor, clerk, or attorney. Plaintiff instead alleges that the police officer’s investigation and incident report alone were sufficient notice to defendant. Plaintiff relies heavily on *Chambers v Wayne Co Airport Auth*, unpublished opinion per curiam of the Court of Appeals, issued June 5, 2208 (Docket No. 277900), but *Chambers* has no precedential value, MCR 7.215(C)(1), does not overrule *Rowland*, 477 Mich 197, and concerns a different statutory provision. It is not persuasive in this case. Because the investigation and incident report failed to provide notice to any of the individuals who could have been lawfully served, the notice was not sufficient under MCL 691.1404. See MCR 2.105(G). Accordingly, the trial court properly granted summary disposition pursuant to MCR

2.116(C)(7) because plaintiff failed to substantially comply with the notice requirements of MCL 691.1404.¹

Affirmed.

/s/ Karen M. Fort Hood
/s/ Pat M. Donofrio
/s/ Amy Ronayne Krause

¹ We will not address the issue of whether verbally informing a person in defendant's clerk's office of plaintiff's intention to file a lawsuit and showing the person a copy of the police incident report was adequate notice pursuant to MCL 691.1404 because plaintiff did not raise this argument in the statement of questions presented or brief this issue. See *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003); *Meagher v McNeely & Lincoln, Inc*, 212 Mich App 154, 156; 536 NW2d 851 (1995).